

(b) (6), (b) (7)(C)

Sender's Phone: (b) (6), (b) (7)(C)  
Sender's Email (b) (6), (b) (7)(C)

August 1, 2021

**VIA ELECTRONIC FILING**

General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

**RE:** Spare Parts, Inc. **29-CA-274143**; CMS Productions **29-CA-274204**; Smuggler, Inc. **29-CA-274934**; Park Pictures, LLC **29-CA-274939**; O Positive, LLC **29-CA-274155**; Biscuit Filmworks **29-CA-274878**; Believe Media **29-CA-274906**; Arts & Sciences **29-CA-274918**; Radical Media, LLC **29-CA-275042**; Morton Jankel Zander, Inc. **29-CA-274880**; Missing Pieces [sic] **29-CA-274162**; Piro, Inc. **29-CA-274164**; Thimble Pea Pictures, LLC **29-CA-274858**

Dear Office of Appeals:

Please accept the attached Appeal Form as notice that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charges in the cases enumerated above.

I, (b) (6), (b) (7)(C) Appellant, am proceeding *pro se* and request that - after carefully considering the attached Appeal Brief - the General Counsel reverse the Regional Director's decisions to dismiss the instant cases; or, alternatively, that the General Counsel remand the cases to The Region for further investigation and fact finding.

Sincere Regards,

(b) (6), (b) (7)(C)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel  
Attn: Office of Appeals  
National Labor Relations Board  
1015 Half Street SE  
Washington, DC 20570-0001

Date: August 1, 2021

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in


Spare Parts, Inc.; CMS Productions; Smuggler, Inc.; Park Pictures, LLC; O Positive, LLC; Biscuit Filmworks; Believe Media; Arts & Sciences; Radical Media, LLC; Morton Jankel Zander, Inc.; Missing Pieces [sic]; Piro, Inc.; and Thimble Pea Pictures, LLC

**Case Names.**

29-CA-274143; 29-CA-274204; 29-CA-274934; 29-CA-274939;  
29-CA-274155; 29-CA-274878; 29-CA-274906; 29-CA-274918; 29-CA-275042;  
29-CA-274880; 29-CA-274162; 29-CA-274164 and 29-CA-274858

**Case Numbers.**

(b) (6), (b) (7)(C)



Cc: Gregory Hessinger (for Thimble Pea Pictures, LLC)  
Robert Sacks (for AICP Employers)

**General Counsel of the National Labor Relations Board**

**Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**

-----x

**(b) (6), (b) (7)(C)**

Charging Party-Appellant

- against -

Spare Parts, Inc.; CMS Productions;  
Smuggler, Inc.; Park Pictures, LLC; O Positive, LLC;  
Biscuit Filmworks; Believe Media; Arts & Sciences;  
Radical Media, LLC; Morton Jankel Zander, Inc.;  
Missing Pieces [sic]; Piro, Inc.;  
and Thimble Pea Pictures, LLC

Charged Parties-Respondents

-----x

## **APPELLANT'S BRIEF**

**(b) (6), (b) (7)(C)**

Phone: **(b) (6), (b) (7)(C)**

Email: **(b) (6), (b) (7)(C)**

Dated: August 2, 2021

**NLRB Case Nos.** 29-CA-274143; 29-CA-274204; 29-CA-274934; 29-CA-274939;  
29-CA-274155; 29-CA-274878; 29-CA-274906; 29-CA-274918; 29-CA-275042;  
29-CA-274880; 29-CA-274162; 29-CA-274164; 29-CA-274858

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# INTRODUCTION

## Respondent-Employers, Cases, and Evidence

Respondent-Employer Thimble Pea Pictures, LLC is a motion picture production company and subsidiary of Netflix , Inc. Netflix, Inc. is a signatory to a collective-bargaining agreement with Motion Picture Studio Mechanics Local 52, IATSE (Local 52).

The twelve (12) Respondent-Employer commercial production companies are parties to a collective bargaining agreement with Local 52.

- Throughout (b) (6), (c) Appeal Brief, Appellant will refer to the thirteen (13) Respondents collectively as “Employers”.
- If a matter presented relates only to the twelve (12) Respondent commercial production companies - but not to Thimble Pea Pictures, LLC - Appellant will refer to those Respondents as “AICP Employers”.
- If a matter presented relates to fewer Respondent commercial production companies than the group denominated as AICP Employers, Respondent commercial production company will be referred to by name.
- If a matter presented relates only to Thimble Pea Pictures, LLC, Respondent will be referred to as “Thimble Pea”.

Appellant has electronically filed one hundred seventy-seven (177) items of evidence, affidavits and correspondence - including recorded media - in the instant cases as well as in several other cognate cases.

Beginning on April 6, 2021, in the interest of consolidation and at the direction of the investigating Board Agent, John Mickley, Appellant began electronically filing all evidence, affidavits and correspondence relevant to the instant cases and their cognates under Case No. 29-CB-274175, IATSE Local 52 Motion Picture Studio Mechanics. No evidence relevant to the instant cases has been filed by Appellant under the case names and case numbers herein under appeal. Appellant's evidence for all of the instant cases under appeal was electronically filed under the following three (3) NLRB Case Numbers:

- Case No. 29-CA-271262, Thimble Pea Pictures, LLC is closed as a result of withdrawal by Appellant.
- Case No. 29-CB-271260, IATSE Local 52 Motion Picture Studio Mechanics is closed as a result of withdrawal by Appellant.
- Case No. 29-CB-274175, IATSE Local 52 Motion Picture Studio Mechanics is open and, as of this writing, (b) (7)(A), (b) (5)

The Board Agent's investigations and findings in several anti-union discrimination (Refusal to Hire) cases in which Local 52 (b) (6), (b) (7)(C) - as agents of AICP Employers - refused to hire Appellant as retaliation for Appellant's protected union activities will be central to Appellant's argument for reversal of the Regional Director's decisions to dismiss the instant cases. (b) (7)(A)

(b) (7)(A)

- 29-CA-274217, (b) (6), (b) (7)(C) as Agent of [AICP Employers];
- 29-CA-274206, (b) (6), (b) (7)(C) as Agent of [AICP Employers];
- 29-CA-274241, (b) (6), (b) (7)(C) as Agent of [AICP Employers];
- 29-CA-274254, (b) (6), (b) (7)(C) as Agent of [AICP Employers].

### **Plea for the General Counsel's Patience**

Appellant is not an attorney. For this reason, Appellant pleads with the General Counsel for patience when considering the form in which case materials and discussion are presented throughout this Appeal Brief.

Appellant has attempted to narrow (b) (6), (b) (7)(C) Statement of Facts and subsequent pleadings to only those matters essential to aiding the General Counsel to reach a decision regarding dismissal of the instant cases. Appellant nonetheless encourages the General Counsel to examine as much of the record in these sprawling, closely related cases as is practicable and to request additional information from Appellant, Respondents and the Regional Director, if needed, before rendering a decision.

## STATEMENT OF THE CASE AND FACTS

1. Thimble Pea Pictures, LLC (Thimble Pea & Employers) is a motion picture production company and subsidiary of Netflix, Inc. created for the sole purpose of filming “Untitled Art Project” (UAP), a serial, narrative fiction television show. Netflix, Inc. is a signatory to a collective bargaining agreement (CBA) with Motion Picture Studio Mechanics Local 52, IATSE (Local 52). The CBA between Netflix, Inc. and Local 52 does not contain language or reference to an exclusive hiring hall arrangement between the parties. **[Ref. E-File Evidence: “Local 52 Majors Contract 2018 (Expires 05-15-2021).pdf”]**
2. CMS Productions; Smuggler, Inc.; Park Pictures, LLC; O Positive, LLC; Spare Parts, Inc.; Biscuit Filmworks; Believe Media; Arts & Sciences; Radical Media, LLC; Morton Jankel Zander, Inc.; Missing Pieces [sic]; and Piro, Inc. (AICP Employers & Employers) are commercial production companies and signatories to a CBA with Local 52. The CBA between AICP Employers and Local 52 does not contain language or reference to an exclusive hiring hall arrangement between the parties. **[Ref. E-File Evidence: “AICP LOCAL 52 Collective Bargaining Agreement.pdf”; “AICP Local 52 Commercial Rates 2020.pdf”; “AICP Memorandum of Agreement 2017.pdf”; and “Local 52 AICP Contract Wage Rates 2019-2020.pdf”]**
3. (b) (6), (b) (7)(C) (Appellant) has been a member of Local 52 labor union since (b) (6), (b) (7)(C). Appellant works as an (b) (6), (b) (7)(C) on major motion pictures, commercials, and television shows covered by Local 52 CBAs. Appellant has



worked in the following (b) (6), (b) (7)(C) department categories and classifications: (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

[Ref. Case File: Confidential Witness

Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) - (b) (6), (b) (7)(C), (b) (7)(D) 2021 ¶ 1 (b) (6), (b) (7)(C), (b) (7)(D) #1 Aff. ¶ 1. )]

4. Appellant's work for Employers - especially, in several instances, Appellant's

direct involvement as (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) as an agent of AICP Employers - has

afforded Appellant extensive knowledge of and experience with Employers'

hiring and other personnel practices. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) #1 Aff.]

5. Board Agent concluded, as a result of Region's investigations, that Local 52

Department Heads are Statutory Supervisors under The Act; further, if AICP

Employers and NLRB cannot settle the Refusal to Hire cases involving AICP

Employers, which cases are cognates to the instant cases, (b) (7)(A)

[Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) "RE: Longform Dismissal and & Statutory Supervisors." Message to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). 2021. Email Thread)

6. Local 52 Department Heads are the supervisors for their respective crafts and are

fully and explicitly authorized as agents of Employers to hire, fire, layoff,

furlough and discipline employees working in positions those Department

Heads supervise. Further, Department Heads are authorized as agents of

Employers to determine the general category and specific job title under which

an employee will work, sometimes on a day to day basis and, as such, Local 52

Department Heads determine their subordinate employees' wage rates. [Ref.

Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 5-16.]

7. During Appellant's (b) (6), (b) (7)(C)) years as a member of Local 52, Appellant has been active in Local 52 affairs in Employers' workplaces and has been (b) (6), (b) (7)(C) to be Local 52 (b) (6), (b) (7)(C) on job sites on numerous occasions. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff.]
8. In late (b) (6), (b) (7)(C) of 2018, Local 52 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) informed Appellant that Local 52 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) had taken certain discriminatory actions against Appellant - including refusing to hire Appellant - in retaliation for Appellant's protected union activities. (b) (6), (b) (7)(C) also informed Appellant that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and employee of commercial production company Bark Bark - which is not party to the instant cases - requested that (b) (6), (b) (7)(C) fire or "release" Appellant from a commercial shoot for which (b) (6), (b) (7)(C) had already hired Appellant because (b) (6), (b) (7)(C) considered Appellant to be "trouble" owing to Appellant's (b) (6), (b) (7)(C) of Local 52 CBAs. (b) (6), (b) (7)(C) hired Appellant over (b) (6), (b) (7)(C) objections. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 17-26.] and [Ref. E-Filed Evidence: "Screenshot of Messages with (b) (6), (b) (7)(C).pdf"]
9. On (b) (6), (b) (7)(C), 2018, Appellant asked Local 52 member and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) to explain the various discriminatory, anti-union actions (b) (6), (b) (7)(C) had taken against Appellant in recent months. (b) (6), (b) (7)(C) told Appellant that (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) as well as other Local 52 cardholders had discouraged (b) (6), (b) (7)(C) for continuing to hire Appellant because Appellant was “not flexible enough about the commercial contract”, by which Appellant took (b) (6), (b) (7)(C) to mean Appellant was unwilling to waive terms of the AICP Employers’ CBA with Local 52 when pressured to do so by (b) (6), (b) (7)(C) and other agents of AICP Employers. Appellant discussed the anti-union discrimination issues with (b) (6), (b) (7)(C) in person and in writing over several days. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 27-31.] and [Ref. E-Filed Evidence: “2018- (b) (6), (b) (7)(C) EMAIL From (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) First Steps To Resolving A Problem.pdf”] and [Ref. E-Filed Evidence: “2018- (b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) To (b) (6), (b) (7)(C) Response to First Steps To Resolving A Problem.pdf”]

10. On (b) (6), (b) (7)(C), 2018, Appellant filed a written complaint with Local 52

(b) (6), (b) (7)(C)  
(b) (6), (b) (7)(C) alleging anti-union animus on the part of (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) employer Bark Bark. In (b) (6), (b) (7)(C) complaint, Appellant requested that Local 52 file an unfair labor practice charge (ULP) against (b) (6), (b) (7)(C) with NLRB. [Ref. E-File Evidence: “2018- (b) (6), (b) (7)(C) Gmail - Anti-Union Animus Complaint - (b) (6), (b) (7)(C) - Bark Bark - Hulu.pdf”]

11. On (b) (6), (b) (7)(C) 2018, (b) (6), (b) (7)(C) wrote to Appellant advising against an ULP charge against (b) (6), (b) (7)(C) saying that (b) (6), (b) (7)(C) thought “it might be best to let this slide.” [Ref. E-File Evidence: “2018- (b) (6), (b) (7)(C) Gmail (b) (6), (b) (7)(C) Response to Anti-Union Animus Complaint - (b) (6), (b) (7)(C) - Bark Bark - Hulu.pdf”]

12. On (b) (6), (b) (7)(C) 2019, Appellant filed a written complaint with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) alleging anti-union animus on the part of (b) (6), (b) (7)(C) and requesting that Local 52 file an ULP charge against (b) (6), (b) (7)(C) with NLRB. [Ref. E-File Evidence: "2019 (b) (6), (b) (7)(C) EMAIL (b) (6), (b) (7)(C) Anti-Union Animus Complaint/Executive Board Action.pdf"]

13. On (b) (6), (b) (7)(C) 2019, Appellant had a telephone conversation with (b) (6), (b) (7)(C) regarding the NLRB charge Appellant requested against (b) (6), (b) (7)(C) and Local 52 member (b) (6), (b) (7)(C) that included the following exchange:

(b) (6), (b) (7)(C) Uh, so listen, so I got your message. I sent it to our attorney to look at.

(b) (6), (b) (7)(C) Umhum.

(b) (6), (b) (7)(C) Umm, we have a couple of issues, uh, with regards to the NLRB.

(b) (6), (b) (7)(C) Okay.

(b) (6), (b) (7)(C) Okay. (b) (6), (b) (7)(C) says what could very well happen, if it goes to the NLRB, right. They will establish the fact that. Who's the, uh, who's the, who's, who are you--?

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) I got a brain freeze. Yeah. Okay. I know (b) (6), (b) (7)(C) Uh, so, but the problem is if they establish, (b) (6), (b) (7)(C) says - and they're gonna look into it - the fact that (b) (6), (b) (7)(C) was a (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C): Right.

(b) (6), (b) (7)(C) Right. Supervisors are not covered by collective bargaining agreements. Okay, so what could potentially happen is they know they designate (b) (6), (b) (7)(C) as a (b) (6), (b) (7)(C) and (b) (6), no longer can work under a union contract. Right. But then that applies throughout the business. That means every gaffer and every key grip and every prop master could potentially no longer be covered by a contract.

(b) (6), (b) (7)(C) Right.

(b) (6), (b) (7)(C) We don't want that to happen.

[Ref. E-Filed Evidence: "2019-(b) (6), (b) (7)(C) Transcript - Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).pdf" Pg. 2 & 3] and ["2019-(b) (6), (b) (7)(C) Digital Audio Recording- Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).mp3"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 39-44.]

14. During the (b) (6), (b) (7)(C) 2019 telephone conversation, (b) (6), (b) (7)(C) went on to describe (b) (6), (b) (7)(C) own experience of Local 52's inability to control the hiring practices of Local 52 (b) (6), (b) (7)(C), even when those (b) (6), (b) (7)(C) are discriminating against other Local 52 members - in this case, (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) - who described anti-union discrimination perpetrated against (b) (6), (b) (7)(C) by Local 52 (b) (6), (b) (7)(C):

(b) (6), (b) (7)(C) And let me, let me, let me also say that when I got into the union in (b) (6), (b) (7)(C) - okay - probably 75% of our work was commercials.

(b) (6), (b) (7)(C) Right.

(b) (6), (b) (7)(C) Okay. And I was (b) (6), (b) (7)(C) on the job.

(b) (6), (b) (7)(C) Umhum.

(b) (6), (b) (7)(C) Right. And I pretty much, you know, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) . (b) (6), (b) (7)(C) Right. And

when I was (b) (6), (b) (7)(C) it was the same thing. Right. I would say

guys would be waiving their meal penalties, waiving the travel

time. Right. And I would call the union and guess what? Within a

year, no more commercials for me.

At the conclusion of the call, (b) (6), (b) (7)(C) resolved to arrange a meeting between Appellant and Local 52 officials to discuss a way to address (b) (6), (b) (7)(C) anti-union actions without involving NLRB. [Ref. E-Filed Evidence: "2019- (b) (6), (b) (7)(C) Transcript - Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).pdf" Pg. 4 & 5] and ["2019 (b) (6), (b) (7)(C) Digital Audio Recording- Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).mp3"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 39-44.]

15. On (b) (6), (b) (7)(C), 2019, (b) (6), (b) (7)(C) sent an email to (b) (6), (b) (7)(C) with the subject heading "In Support of (b) (6), (b) (7)(C)." In (b) (6), (b) (7)(C) email, (b) (6), (b) (7)(C) decried (b) (6), (b) (7)(C) "unethical, self-serving" decision to stop hiring Appellant on commercials. (b) (6), (b) (7)(C) asserted that the principal reason for (b) (6), (b) (7)(C) negative job actions was that (b) (6), (b) (7)(C) [Appellant], enforces union rules on set that Production regularly tries to bend, putting pressure on department keys to waive

meal penalties and overtime, among other things.” (b) (6), (b) (7)(C) added:

*“This decision by (b) (6), (b) (7)(C) addresses a long-standing issue in the commercial end of our business, of which, I believe you may be aware. Not all, but some Production people (Producers and Production Supervisors) put pressure on a regular basis on department keys to bend union rules. Many of those department keys comply, hoping for the reward from Production of being preferred hires. These department keys deprive their crew of earned wages in the form of meal penalties, overtime, etc. This is part of the commercial culture and it needs to stop.”*

(b) (6), (b) (7)(C) comments on these matters were based on conversations (b) (6), (b) (7)(C) had with (b) (6), (b) (7)(C) as well as on (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) of experience as a Local 52 member and (b) (6), (b) (7)(C) working on commercials. [Ref. E-Filed Evidence: “2019 (b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) - In Support of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).pdf”]

16. On (b) (6), (b) (7)(C) 2019, a meeting was held at Local 52’s offices to discuss alternatives to a NLRB ULP charge against (b) (6), (b) (7)(C). The duration of the meeting was more than two (2) hours and it was attended by Local 52 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), Adrienne L. Saldana (Saldana) of Local 52’s law firm Spivak Lipton, LLP, Local 52 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and Appellant. A substantial portion of the meeting was composed of (b) (6), (b) (7)(C) and Saldana discussing their wish to avoid NLRB scrutiny and how to accomplish that goal while “getting

[Appellant] back to work". It was finally decided that - in lieu of filing an ULP with NLRB - Appellant would file various internal charges against (b) (6), (b) (7)(C) and other Local 52 members with the Local 52 Executive Board. According to (b) (6), (b) (7)(C) and Saldana, Local 52 would use those charges as an impetus to punish and bring to an end the anti-union activities of Local 52 (b) (6), (b) (7)(C), in particular those (b) (6), (b) (7)(C) working as agents of commercial production companies such as AICP Employers. When Appellant suggested Local 52 suspend the union membership of the guilty Local 52 (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) said it was not possible to do so under law. Saldana expressed her grave concern that, even if it was legal to suspend the "bad actor" (b) (6), (b) (7)(C) membership, doing so could open the door to (b) (6), (b) (7)(C) hiring non-union workers. Saldana suggested that keeping Local 52 (b) (6), (b) (7)(C) in control of the hiring process was crucial to maintaining the "delicate balance" required to continue excluding non-union workers from employment on productions operating under Local 52 CBAs.

**SALDANA:** The, the challenge is how to fix it without upsetting that balance. Because, it's not that we love this balance, but it's that, if it tips, it doesn't help, it doesn't. These guys benefit if it tips. They benefit. They're just now rogue and they don't have to hire any- They don't have to- Not only do they not have to hire you, they don't have to hire anybody that's a union member. They can let



everybody go. Right? Same thing if they become supervisors, they don't have to hire union. They can hire whomever they want.

(b) (6), (b) (7)(C) Wait a minute. They can put a whole non-union crew on a commercial?

**SALDANA:** Absolutely.

(b) (6), (b) (7)(C) As long as they're working under the collective bargaining agreement.

**SALDANA:** They'll get all the benefits of your contract and they don't have to have cards.

(b) (6), (b) (7)(C) [inaudible] that doesn't leave this room.

**SALDANA:** Right.

(b) (6), (b) (7)(C) Right.

**SALDANA:** This is a very delicate balance.

(b) (6), (b) (7)(C) This is the shit we deal with.

(b) (6), (b) (7)(C) Yeah.

(b) (6), (b) (7)(C) Huh.

(b) (6), (b) (7)(C) So, it's like, okay [inaudible]. Okay, but at the end of the day,

**SALDANA:** And that's not to say if we don't want to help you solve this problem.

(b) (6), (b) (7)(C) No, I understand. I mean, I--

**SALDANA:** I'm saying, we've gotta, we're trying to figure out how to do it in the way that does the least damage to that equilibrium.

(b) (6), (b) (7)(C) Yeah, alright.

**SALDANA:** Because if that gets tipped, these guys get off scot-free and you're, you're no better for it. And your colleagues are no better for it.

[Ref. E-Filed Evidence: "2019 (b) (6), (b) (7)(C) Transcript - Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).pdf" Pg. 74-76] and ["2019 (b) (6), (b) (7)(C) Digital Audio Recording- Telephone Conversation (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).mp3"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 48-85.]

17. On (b) (6), (b) (7)(C) 2019, Appellant filed charges against (b) (6), (b) (7)(C) with Local 52's Executive Board. The Local 52 Trial Board found (b) (6), (b) (7)(C) guilty of the charges.

[Ref. E-File Evidence: "2019 (b) (6), (b) (7)(C) IATSE Local 52 Executive Board Charge Affidavit of (b) (6), (b) (7)(C), (b) (7)(D) NBC Universal Notarized & Including Signed Agreements"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 88.]

18. On (b) (6), (b) (7)(C) 2019, Appellant filed charges against Local 52 (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) with Local 52's Executive Board. (b) (6), (b) (7)(C) pled guilty to the charges at trial. [Ref. E-File Evidence: 2019 (b) (6), (b) (7)(C) AMENDED IATSE Local 52 Executive Board Charge Affidavit & Exhibits (b) (6), (b) (7)(C), (b) (7)(D) vs (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).pdf"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 89.]

19. On (b) (6), (b) (7)(C), 2019, Appellant filed charges with the Local 52 Executive Board against (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) was the (b) (6), (b) (7)(C) person to inform Appellant of (b) (6), (b) (7)(C) anti-union biases and actions. To Appellant's shock, (b) (6), (b) (7)(C) later instigated Appellant's termination by It's Possible Productions from employment on the television series "Wyatt Cenac's Problem Areas" (WCPA) in retaliation for Appellant's protected activities as Local 52 (b) (6), (b) (7)(C) on WCPA. Appellant's termination by WCPA resulted in an ULP charge (NLRB Case No. 29-CA-237437) against It's Possible Productions that concluded with a non-Board settlement that included back pay and front pay awards to Appellant. (b) (6), (b) (7)(C) the Local 52 (b) (6), (b) (7)(C) who hired Appellant, did not cooperate with NLRB's investigation of the WCPA ULP charge. Appellant filed the related internal charge against (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C), 2019 with the Local 52 Executive Board alleging that (b) (6), (b) (7)(C) instigated Appellant's termination by WCPA, a charge for which (b) (6), (b) (7)(C) was found guilty by the Local 52 Trial Board. [Ref. E-File Evidence: "2019-(b) (6), (b) (7)(C) IATSE Local 52 Executive Board Charge Witness List (b) (6), (b) (7)(C) WCPA complete with cover letter.pdf"] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 90-92.]

20. During calendar year 2019, AICP Employers and other commercial production companies, through and by the agency of Local 52 (b) (6), (b) (7)(C) blacklisted Appellant from work on commercials within Local 52's jurisdiction such that during calendar year 2019, Appellant worked (b) (6), (b) (7)(C) for commercial employers; and by (b) (6), (b) (7)(C) 2020, Appellant ceased to receive

any offers of work on commercials from Local 52 (b) (6), (b) (7)(C). Appellant was blacklisted by Local 52 (b) (6), (b) (7)(C) as retaliation for (b) (6), (b) (7)(C) protected union activities [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 104-114.]

21. Local 52's (b) (6), (b) (7)(C) - (b) (6), (b) (7)(C) - and Local 52's legal counsel made no attempt to encourage, persuade or coerce Local 52 (b) (6), (b) (7)(C) working on commercial productions to resume hiring Appellant for work with AICP Employers following Appellant's agreement to refrain from filing ULP charges with NLRB as discussed with Local 52's (b) (6), (b) (7)(C) and legal counsel on (b) (6), (b) (7)(C), 2019.
22. On January 11, 2021, Appellant filed ULP charges under Section 8(b)(1)(A) against Local 52 (Case No. 29-CB-271260) alleging coercion and union infiltration based on Section 2(11) of The Act. Appellant also filed charges under Section 8(a)(2) & (1) against Thimble Pea (Case No. 29-CA-271262) alleging domination and infiltration of Local 52. Appellant's charges against Local 52 and Thimble Pea.
23. On March 15, 2021, Appellant filed ULP charges under Section 8(a)(3) against AICP Employers based on AICP Employers' agents' - (b) (6), (b) (7)(C), (b) (6), (b) (7)(C) - refusals to hire Appellant in retaliation for Appellant's protected union activities (Case Nos. 29-CA-274217, 29-CA-274254, 29-CA-274241, 29-CA-274206).
24. On March 26, 2021, Appellant filed ULP charges under Section 8(a)(2) and (3) alleging AICP Employers had "dominated IATSE Local 52 Motion Picture Studio

Mechanics by infiltrating and participating in the affairs and meetings of Local 52 and had “discriminatorily failed to employ employees in classifications for which IATSE Local 52 is the exclusive collective bargaining agent because of their status as non-union craftspeople.”

25. Appellant’s allegations that Employers had infiltrated Local 52 were based on, among other things, (b) (6), (b) (7)(C) discrimination against Appellant in relation for Appellant’s union activities, instances of (b) (6), (b) (7)(C) pressuring Appellant and other rank and file craftspeople to waive contractual rights, time card alterations by (b) (6), (b) (7)(C) at the request of AICP Employers, Employers practice of making extra-contractual payments to (b) (6), (b) (7)(C) Local 52’s acknowledgement of these several conflicts of interests among Local 52 (b) (6), (b) (7)(C), Local 52’s failure to take affirmative steps to correct the problems, and Local’s affirmative steps to avoid NLRB scrutiny of the problems. [Ref. (b) (6), (b) (7)(C), (b) (7)(D) Aff.] and (Ref. (b) (6), (b) (7)(C), (b) (7)(D) #2 Aff.) and [Ref. Case File: “(b) (6), (b) (7)(C) -14 Biscuit Filmworks Allure (b) (6), (b) (7)(C) HAND DELIVERED LOCAL 52 OFFICERS 2019 (b) (6), (b) (7)(C).pdf”; (b) (6), (b) (7)(C) -16 Radical Media Meal Penalty Waiver, (b) (6), (b) (7)(C) HAND DELIVERED LOCAL 52 OFFICERS 2019- (b) (6), (b) (7)(C).pdf”; “2014- (b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) - List of (b) (6), (b) (7)(C) Lights Available for Rental.pdf”; “2018 (b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) To (b) (6), (b) (7)(C) Response to First Steps To Resolving A Problem.pdf”; “2018- (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) Custom Lighting Rental Invoice - O Positive - ESPN (b) (6), (b) (7)(C):2018.pdf”; “2019 (b) (6), (b) (7)(C) EMAIL (b) (6), (b) (7)(C) Anti-Union

Animus Complaint:Executive Board Action.pdf"; "2019-(b) (6), (b) (7)(C) Digital Audio Recording- Telephone Conversation -(b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).mp3"; "2019-(b) (6), (b) (7)(C) Transcript - Telephone Conversation - (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) - NLRB ULP (b) (6), (b) (7)(C).pdf"; "2019-(b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) - In Support of (b) (6), (b) (7)(C).pdf"; "2019-(b) (6), (b) (7)(C) IATSE Local 52 Yellow Union Meeting AUDIO EQUALIZED Compressed 69MB (2hr 23min).mp3"; "2019-(b) (6), (b) (7)(C) IATSE Local 52 Yellow Union Meeting AUDIO TRANSCRIPT COMPLETE.pdf"; "2019-(b) (6), (b) (7)(C) EMAIL from (b) (6), (b) (7)(C) to Local 52 (b) (6), (b) (7)(C) Shot Over The Bow.pdf"; "2019-(b) (6), (b) (7)(C) AMENDED IATSE Local 52 Executive Board Charge AFFIDAVIT & EXHIBITS (b) (6), (b) (7)(C), (b) (7)(D) vs (b) (6), (b) (7)(C), (b) (7)(D).pdf"; "2019-(b) (6), (b) (7)(C) IATSE Local 52 Executive Board Charge WITNESS LIST (b) (6), (b) (7)(C) WCPA complete with cover letter.pdf"; "2020-(b) (6), (b) (7)(C) EMAIL (b) (6), (b) (7)(C) to Local 52 Membership "We have members who are also producers".pdf"; "2021-(b) (6), (b) (7)(C) Audio Recording (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) UAP Netflix Grievance & Yellow Union Meeting.mp3"; "2021-(b) (6), (b) (7)(C) Transcript of Audio Recording (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) UAP Netflix Grievance & Yellow Union Meeting.pdf"]

26. Appellant alleged that Local 52 and Employers have a *quid pro quo* arrangement by which Local 52 allows statutory supervisors, (b) (6), (b) (7)(C), working in the interests of employers, to be members of Local 52 in exchange for which Employers grant Local 52 - through those (b) (6), (b) (7)(C) - exclusive authority over hiring, retention and other personnel matters that make it possible

for Local 52 to exclude non-union craftspeople from Employers' workplaces and for (b) (6), (b) (7)(C) to prefer friends, family and others for employment without interference by Employers.

27. During March, 2021, Appellant filed ULP charges against Local 52 (Case No. 29-CB-274175) alleging that Local 52 and Local 52 (b) (6), (b) (7)(C) discriminate against non-union workers in employment. Appellant also filed ULP charges against Employers for discriminating against non-union workers in employment, which charges are the subject of this Appeal. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D). ¶ 176-191.]

28. The very same Local 52 (b) (6), (b) (7)(C) - whom Regional Director determined to be acting as agents of AICP Employers in the several Refusal to Hire cases causing the Regional Director to deem AICP Employers liable under The Act for those Local 52 (b) (6), (b) (7)(C) discriminatory actions against Appellant are acting no less as agents of AICP Employers when discriminating against non-union Permit Craftspeople in the instant cases under Appeal.

29. The terms "Permit Craftsperson" and "Permit Craftspeople" used by Appellant throughout (b) (6), (b) (7)(C) Confidential Witness Affidavits as well as in correspondence and discussions with the Board Agent, are terms of art created by Appellant for use within the context of NLRB's investigations of the instant and other cases to encompass and reference all non-union workers and non-Local 52 members

controlled by Local 52 and excluded by Employers from consideration for employment. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 176.]

30. Regional Director states in her Decisions to Dismiss the instant cases:

*"The contract covers unit work performed by "permit employees," individuals whose application for Union membership is still pending. The investigation revealed that the Union maintains and enforces rules that employees who are not full members of the Union, known as "permit" or "applicant" employees, can only work for the Employer if they are referred to the Employer by the Union."*

31. The Regional Director's characterization of "permit employees" (Permit Craftspeople) in her Dismissal is incomplete. Although some Permit Craftspeople have "pending" applications for union membership, the majority of Permit Craftspeople have not applied to Local 52 for membership. The term Permit Craftspeople includes - in addition to non-union workers with pending applications for Local 52 membership - non-union workers who have not applied for union membership but intend to apply as well as non-union workers who do not intend to join Local 52. Further, although the overwhelming majority of Permit Craftspeople are non-union workers, some Permit Craftspeople are members of other IATSE locals, including motion picture industry unions from inside and outside of Local 52's jurisdictions, such as Theatrical Stage Employees Local 1, New York; and Studio Electrical Lighting Technicians Local 728, California.



32. Permit Craftspeople apply for work through Local 52 because Local 52

Department Heads are authorized as agents of Employers to control all hiring of rank and file employees for all motion picture production companies operating within Local 52's jurisdiction under CBAs. Employers do not have a process or mechanism by which non-union craftspeople - or union cardholders such as Appellant, for that matter - can apply for work on motion picture productions. Permit Craftspeople cannot "apply for positions with the Employer," as the Regional Director's Dismissal Letters imply. Even Appellant, after more than (b) (6), (b) (7)(C) years as a member of Local 52, cannot "apply for positions with the employer" because Employers do not list job openings and Employers do not accept applications for work in positions covered by Local 52 CBAs. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff.]

33. Local 52 Department Heads do not apply for work with Employers. Rather, Employers contact and recruit Local 52 Department Heads directly for employment. Further, Employers recruit and hire only Local 52 cardholders for Department Head positions. After Employers hire a Local 52 Department Head, Employers empower the Local 52 Department Head with all hiring and other supervisory authority over department personnel. The Thimble Pea "Untitled Art Project" crew list is composed entirely of Local 52 cardholders in Department Head and other positions under job classifications covered by Local 52 CBAs. [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 6-16, 34 & 35.] and ["Thimble Pea Pictures

**"Untitled Art Project" (UAP) Crew List 2020- (b) (6), (b) (7)(C) w/ Union & Guild Affiliations Added.pdf"]**

34. Local 52 Department Heads recruit exclusively from among Local 52 bargaining unit members (BUMs) to work for Employers. Recruitment of BUMs by Department Heads precedes hiring. [Ref. E-File Evidence: "2018- (b) (6), (b) (7)(C) Email (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) WCPA Offer of Work.pdf"] and [Ref. E-File Evidence: "Messages with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -2014 through (b) (6), (b) (7)(C) -2019"] and [Ref. E-File Evidence: "Messages with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -2016 through (b) (6), (b) (7)(C) -2019.pdf"] and [Ref. E-File Evidence: "Messages with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (iCloud Account) (b) (6), (b) (7)(C) -2015 through (b) (6), (b) (7)(C) 2019.pdf"] and [Ref. E-File Evidence: "Messages with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 2016 through (b) (6), (b) (7)(C) -2019.pdf"] and [Ref. E-File Evidence: "Messages with (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) -2014 through (b) (6), (b) (7)(C) -2018"]]
35. Employers' policy and practice of intentionally excluding non-union craftspeople from consideration as candidates for Department Head positions is the foundational prerequisite to Local 52's ability to exclude non-union craftspeople and Permit Craftspeople from employment. The files in the instant cases contain numerous "call sheets" and the Thimble Pea crew list evidencing the fact that Employers' hire only Local 52 Department Heads without exception and to the exclusion of non-union workers. [Ref. E-Filed Evidence: "Thimble Pea Pictures "Untitled Art Project" (UAP) Crew List 2020- (b) (6), (b) (7)(C) w/ Union & Guild Affiliations Added"] and [Ref. E-Filed Evidence: Various "Call Sheets,

including by not limited to: “2018-**(b) (6), (b) (7)(C)** L'Oreal Believe Job #21807 Call Sheet copy.pdf”; “2018-**(b) (6), (b) (7)(C)** ESPN O Positive Scout Call Sheet **(b) (6), (b) (7)(C)** Job.pdf”; “2018-**(b) (6), (b) (7)(C)** ESPN Shoot Day Call Sheet **(b) (6), (b) (7)(C)** Job.pdf”; “2019-**(b) (6), (b) (7)(C)** WCPA Call Sheet B-Block.pdf”; “2020-**(b) (6), (b) (7)(C)** Untitled Art Project (UAP) Call Sheet Day 69 Thimble Pea.pdf”; “(1 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**; “(2 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**”; “(3 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**; “(4 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**”; “(5 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**”; “(6 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2020-**(b) (6), (b) (7)(C)**”; “(7 of 7) UAP Untitled Art Project - Thimble Pea - Netflix - **(b) (6), (b) (7)(C)** Call Sheets - 2020-**(b) (6), (b) (7)(C)** through 2021-**(b) (6), (b) (7)(C)**

36. Local 52 Department Heads' practice of hiring only cardholding members of Local 52 has its basis in the "Constitution and By-Laws of Motion Picture Studio Mechanics Local #52 of the United States and Canada", By-Laws, Article I, Section 2, "Obligation", which oath is taken by all Local 52 initiates and states in pertinent part: *"I...(full name)...do hereby pledge my word and honor...to do all in my power to secure employment for brother and sister members of this Union. I shall willingly submit to such discipline as may be visited upon me for violation of this*

*pledge.*" [Emphasis added]. [Ref. E-File Evidence: "IATSE Local 52 Constitution and Bylaws, Revised December 2017.pdf" (19)] and [Ref. Case File: (b) (6), (b) (7)(C), (b) (7)(D)] Aff. ¶ 173-174.]

37. Local 52 does not "refer permit employees for work" as the Regional Director asserts in her Dismissal Letters. Local 52 assigns Permit Craftspeople to work for Local 52 Department Heads with the support and cooperation of Employers who have empowered Local 52 Department Heads with Employers' hiring and other supervisory authorities.

38. At a Local 52 Executive Board Meeting on (b) (6), (b) (7)(C) 2021, (b) (6), (b) (7)(C) Local 52 (b) (6), (b) (7)(C) since (b) (6), (b) (7)(C) lamented the fact that some Local 52 (b) (6), (b) (7)(C) were failing to release Permit Craftspeople for "reassignment": "(b) (6), (b) (7)(C), *reported operations were improving in the office and thanked the Shop Stewards for their hard work, however department heads were not releasing their applicants for reassignment, and that needs to change.*" [Ref. E-File Evidence: "2021-(b) (6), (b) (7)(C) Local 52 Executive Board Minutes EBM MINUTES (b) (6), (b) (7)(C)-2021(2).pdf" (2)] and [Ref. Case File: "2021-(b) (6), (b) (7)(C), (b) (7)(D) Supplemental Confidential Witness Affidavit.pdf" (b) (6), (b) (7)(C), (b) (7)(D) Aff.) ¶ 9.]

39. Permit Craftspeople who wish to be admitted to Local 52 must defer to Local 52 Department Heads when these supervisors "release", furlough and terminate Permit Craftspeople from employment for the purpose of placing union cardholders in the vacated position. Permit Craftspeople who question discriminatory personnel actions by Local 52 (b) (6), (b) (7)(C) risk being

denied future employment as well as being barred from union membership. In notarized letters sent in 2020 to the Local 52 Executive Board, several former Permit Craftspeople who had gained Local 52 membership wrote in defence of Local 52 (b) (6), (b) (7)(C) on the occasion of Local 52 Trial Board proceedings against (b) (6), (b) (7)(C) and other Local 52 members' based on charges filed by Local 52 (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) in the instant cases (b) (6), (b) (7)(C), who alleged, among other things, that (b) (6), (b) (7)(C) had demanded kickback payments from cardholders and Permit Craftspeople in exchange for work assignments. Local 52 member (b) (6), (b) (7)(C) wrote, (b) (6), (b) (7)(C) would always preface a call for coverage by stating the shift may be pulled if a union member comes [sic] available. There were times when I had shifts retracted for that reason." [Ref. E-File Evidence "2020-(b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Hiring.pdf" ¶ 4 (1)] In defense of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) wrote, "I understand also that there are rules and regulations to be followed and many times I have been canceled by these and other 52 Medics as a permit. The reason cited for these cancellations in the past was that there were 52 union members (Medics) that became available. It is to my knowledge that they have honored these rules. [Ref. E-File Evidence "2020-(b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Permit Hiring.pdf" ¶ 3 (2)] In defence of (b) (6), (b) (7)(C) Local 52 member (b) (6), (b) (7)(C) stated, "On numerous occasions, I have been instructed to use Medics that were on the list, despite the desire to use a

trusted permit that has been requested by productions... (b) (6), (b) (7)(C) frequently asks those within the department as to their work status, making sure members are game fully [sic] employed. (b) (6), (b) (7)(C) holds a deep love for this Union and understanding of the locals policy and procedure.. (b) (6), (b) (7)(C) has brought numerous Medics into the local, from all walks of life, that met the locals guidelines for employment." [Ref. E-File Evidence: "2020- (b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Permit Hiring" ¶ 2-3 (1)] (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) assured the Local 52 Executive Board that "(b) (6), (b) (7)(C) has always had the integrity and interests of the Union in mind by keeping track of which permits are working. (b) (6), (b) (7)(C) had again made it clear that members take precedence over a permit." [Ref. E-File Evidence: "2020 (b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Permit Hiring.pdf" ¶ 1 (1)] SEE ALSO [Ref. E-File Evidence: "2020 (b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Permit Hiring.pdf"; "2020 (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Permit Hiring.pdf"; "2020- (b) (6), (b) (7)(C) Letter to (b) (6), (b) (7)(C) from (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) RE (b) (6), (b) (7)(C) Set Medic Hiring.pdf"]

40. For more than ten (10) years, the demand for motion picture craftspeople within Local 52's jurisdictions has vastly exceeded the number of Local 52 members available to fill open positions on motion picture productions.

41. Local 52 endeavors to limit the number of craftspeople given union membership. Local 52 ensures Local 52 Department Heads maintain control of all hiring in the crafts. Local 52 endeavors to prevent employers from being involved in hiring or

other personnel matters involving workers in Local 52 crafts below the Department Head category.

42. Local 52 has a history of discriminating against non-union workers seeking union membership. In June 2014, the Office of the New York State Attorney General Civil Rights Bureau (OAG) issued findings regarding Local 52's membership admissions practices as part of an "Assurance of Discontinuance" settlement (AOD) between OAG and Local 52. Among the OAG's findings were the following: *"The AOG found significant disparities between, on the one hand, African-American and Latino representation in the Local's membership and, on the other hand, the representation of these minority groups in the available labor pool in the New York City metropolitan area. The OAG further found that, since at least as early as 2009 and continuing to the present, Local 52's admissions policies have a disparate impact upon African-American and Latino applicants. These include a policy of nepotism; the inconsistent application of rules concerning prior work experience of applicants (e.g. the "800-hour rule"); the content and administration of craft examinations; and the general membership vote. The OAG found that Local 52 follows a policy of nepotism in its admissions process - that is, a preference for friends and family (e.g. sons and daughters) of current members in admissions decisions."* [Ref. E-File Evidence: "2014-06-20 Assurance of Discontinuance Pursuant to Executive Law 63(15) Local 52 NYAG Agreement EXECUTED.pdf" (3 & 4)]

43. Following the AOD settlement between OAG and Local 52 intended to halt Local 52's discriminatory membership practices, Local 52 all but closed to non-union

craftspeople its membership application and testing processes, ostensibly to rework its membership and testing practices to comply with AOD. As of the date this Appeal Brief is submitted to the General Counsel, seven (7) years after the execution of the AOD settlement, Local 52 is not accepting applications for membership; has only rarely and briefly opened the application process; and has rarely conducted membership tests for craftspeople whose applications were accepted. Nevertheless, in order to meet the demand for motion picture craftspeople within its jurisdiction, Local 52, with the full knowledge, assistance and cooperation of Department Heads acting as agents of Employers, controls the working lives of Permit Craftspeople by operating a defacto hiring hall for the same nonunion Permit Craftspeople that Local 52 has locked out from membership. The same non-union craftspeople for whom the OAG attempted to find relief.

44. Local 52 has prevailed upon employers operating under CBAs with Local 52 to hire only cardholding union members. In the rare instances when employers have hired non-union craftspeople, Local 52 has pressured employers to add Local 52 members to employers' payroll to "shadow" the non-union craftspeople, even after the jobs in question have been completed, as was the case with producer (b) (6), (b) (7)(C) of Technobabble Productions. [Ref. E-File Evidence: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 118-121 (36-37)] and [Ref. E-File Evidence: (b) (6), (b) (7)(C), (b) (7)(D) Aff. ¶ 23-25 (6-7) ] and [Ref. Case File: Confidential Witness Affidavit of (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), (b) (7)(D)



45. Producers working under Local 52 CBAs accommodate Local 52's demands that they hire only union craftspeople and those producers seek neither judicial intervention nor the assistance of law enforcement authorities.

46. (b) (6), (b) (7)(C) resisted Local 52's demands for "shadow" crew payments, but (b) (6), (b) (7)(C) did not bring Local 52's discriminatory and strongarm tactics to the attention of NLRB or any other regulatory or law enforcement authority prior to Appellant's statements to the Board Agent and the Board Agent's followup interviews with (b) (6), (b) (7)(C), (b) (7)(D) [Ref. Case File: (b) (6), (b) (7)(C), (b) (7) Aff.]

47. Employers - AICP Employers and Thimble Pea - have not, to the best of Appellant's knowledge, furnished NLRB with even one sworn affidavit or admissible item of documentary evidence refuting Appellant's assertions that Employers hire only Local 52 members for Department Head positions; and that Employers support, or are at the very least knowingly complicit in, Local 52's non-union discrimination policies. As a substitute for case evidence, Employers offer only inadmissible "position statements", prepared by Employers legal representatives.

## SUMMARY OF THE ARGUMENT

Employers in the instant cases are liable under The Act for the discriminatory hiring and personnel practices of (b) (6), (b) (7)(C) against non-union workers under the principle of *respondeat superior* insofar as (b) (6), (b) (7)(C) are statutory supervisors and agents of Employers whose wrongful acts were committed within the scope of their supervisory responsibilities. Employers cannot relieve themselves of liability for the discriminatory personnel practices of (b) (6), (b) (7)(C) by merely declaring ignorance of systemic discrimination in their workplaces because Employers failed to take affirmative action of any kind to create and implement hiring or other personnel practices that might insure non-union craftspeople were given equal access to employment. Finally, although Local 52 must be held accountable for encouraging all of its members - crucially, (b) (6), (b) (7)(C) - to discriminate against non-union craftspeople, only Employers have the authority and are accountable to ensure that their hiring and other personnel practices conform to The Act and labor laws.

## ARGUMENT

The Regional Director's decision to dismiss the instant cases presents three (3) issues to the General Counsel. The first and second issues relate to employer liability under The Act. The third issue relates to which party or parties to the employment relationship are best positioned and most likely to affect the relief required in the instant cases and their cognates.

Appellant contends that the General Counsel's answers to the first and second questions are dispositive of the instant cases. Appellant believes consideration of the third question will bring into focus the considerable - but surmountable - obstacles to bringing relief to the thousands of non-union workers who are suffering ongoing harm as a result of Employers' and Local 52's actions.

**ISSUE 1:** Are Employers liable under The Act for illegal discrimination against non-union employees and non-union candidates for employment committed by statutory supervisors whom Employers have empowered with unconditional authority in personnel matters?

Employers in the instant cases are motion picture production companies who operate under CBAs with Local 52. Local 52 represents employees who work in seven (7) distinct skill classifications or crafts, five (5) of which are further divided by Local 52 into three hierarchical categories reflected in CBAs: Department Head, Foreman, and Operator. Department Heads are the supervisors for their crafts.

When assembling crews for motion picture productions, Employers recruit and hire Department Heads from among craftspeople who are members of Local 52.

Employers rely on Department Heads to recruit and hire all subordinate craftspeople who will work in a Department Heads' craft classification. Appellant has, at various times throughout (b) (6), (b) (7)(C) as a member of Local 52, worked as a (b) (6), (b) (7)(C) Appellant has recruited and hired subordinate craftspeople for electric departments on behalf of numerous employers, including AICP Employers. What's more, Appellant has been recruited and hired by (b) (6), (b) (7)(C) on behalf of Thimble Pea and AICP employers.

The Regional Director states that the "investigation revealed the Union, [Local 52], maintains and enforces rules that employees who are not full members of the Union, known as "permit" or "applicant" employees, can only work for the Employer if they are referred to the Employer by the Union." The evidence in the case files clearly establishes - and Appellant has made clear to the Board Agent repeatedly throughout these investigations - that neither non-union nor union craftspeople are "referred" to Employers for work. Union craftspeople are recruited for work and hired directly by Department Heads. Non-union Permit Craftspeople are assigned by Local 52 to work for particular Department Heads, the very same Department Heads empowered by Employers to act as their agents in all personnel matters related to their subordinate craftspeople.

Significantly, Appellant has never been "referred" to an employer - or to Employers in the instant cases - for a non-supervisory position. Further, Appellant has never "applied" for a position of any kind with Employers or any employer in the motion picture industry because no mechanisms exist by which craftspeople seeking

work can learn about job openings and apply to employers for work; and because applying directly to employers for work - and, in doing so, circumventing the recruitment and hiring authorities of Department Heads - would violate industry norms. The case files do not contain evidence contradicting these assertions.

According to The Act, *"The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include...any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."* Controversies regarding the question of an employee's supervisory status in cases considered by The Board and federal courts have focused almost exclusively on the "to assign" and "the responsibility to direct" and "independent judgement" criteria. The hiring, retention, furlough and other core personnel functions are more clear and rarely disputed. Department Heads are, by any standard, persons acting as agents of Employers. What is more, the Board Agent has determined that Department Heads are statutory supervisors. Indeed, Local 52's leaders and legal counsel expressed their concern on (b) (6), (b) (7)(C), 2019 and (b) (6), (b) (7)(C) 2019 that NLRB might designate Department Heads as statutory supervisors; and, for that reason, Local 52 worked to dissuade Appellant from involving NLRB in an investigation of (b) (6), (b) (7)(C) anti-union animus for the singular purpose of avoiding NLRB scrutiny.

The relevant case records are replete with evidence that Department Heads exercise, in the interest of Employers, all twelve (12) of the authorities considered when determining whether or not an individual is a supervisor under Section 2(11) of the NLRA. Department Heads are empowered by Employers to hire, transfer, suspend, lay

off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action and to use independent judgment when doing so. Appellant suggests that it is important, when determining Employers' liability in the instant cases, to consider that Section 2(3) of The Act specifically excludes supervisors from the definition of an employee because supervisors work in the interest of the employer: "*The term 'employee' shall not include...any individual having the status of an independent contractor, or any individual employed as a supervisor...*" In the context of unfair labor practices, Department Heads' status as statutory supervisors imposes on Employers responsibility for Department Heads' actions beyond that which would in some cases be ascribed to an ordinary rank and file "employee".

Under the principle of *respondere superior*, even if Department Heads were not supervisory agents of Employers, employers are liable for the wrongful acts of their employees when those acts are committed within the scope of the employee's duties. Respecting this principle, Employers are liable for Department Heads' discriminatory actions against non-union workers and Permit Craftspeople owing to the fact that Department Heads are vested by Employers with plenary authority in all personnel matters - including hiring, retention and promotion - and, as such, Department Heads' discriminatory acts were committed within the scope of their duties.

Appellant calls the General Counsel's attention the fact that the Regional Director judged meritorious several Refusal to Hire charges filed by Appellant against AICP Employers (Case Nos. 29-CA-274217, 29-CA-274206, 29-CA-274241 and 29-CA-274254).

Those Refusal to Hire charges were brought against the very same AICP Employers charged in the cases that are the subjects of this Appeal and were based on the allegation that (b) (6), (b) (7) (4) Local 52 (b) (6), (b) (7)(C) “as agents of the [AICP Employers], refused to hire [Appellant] because of [Appellant’s] union activity, in violation of Section 8(a)(3) of the Act.” In those Refusal to Hire cases, as with Employers in the instant cases, AICP Employers denied knowledge of the (b) (6), (b) (7)(C) wrongful conduct. Simply put and for reasons Appellant is unable to divine, the Regional Director determined that AICP Employers are liable for *anti-union discrimination* by their supervisor (b) (6), (b) (7) (b) (6), (b) (7) but that AICP Employers and Thimble Pea are *not* liable for acts of discrimination against *non-union* workers by those same supervisor (b) (6), (b) (7)(C) .

Appellant asserts that the Regional Director has arbitrarily bifurcated the issue of employer liability under The Act by, on the one hand, imputing liability to AICP Employer’s for the anti-union acts of their agent (b) (6), (b) (7)(C) in the Refusal to Hire cases and, on the other hand, relieving those same AICP Employers and Thimble Pea of liability for their agent (b) (6), (b) (7)(C) ’ acts of discrimination against non-union employees and Permit Craftspeople in the instant cases. Appellant does not question the Regional Director’s good faith intentions - however obscure - but the decision to apply contradictory interpretations of the same rule to what are the same parties in closely related circumstances and cases strikes Appellant as an incoherent policy decision disguised as fact finding that undermines the purposes of The Act and the reliance interests of the parties and the public.

**ISSUE 2:** Does Employers' ignorance of Local 52's unwritten, widely-known and universally-practiced policy among Employers' unionized supervisors of prioritizing the hiring, retention, and promotion of union members over non-union workers relieve Employers of liability for the discriminatory actions of their supervisory employees?

Appellant is willing to stipulate that Employers are "ignorant" of the details of Local 52's discriminatory policies regarding non-union craftspeople. Appellant, nonetheless, asserts also that Employers' ignorance is willful in the sense that Employers "refuse to recognize" or "decline to take notice of" those discriminatory policies. Although they may be ignorant of the details, Appellant contends Employers are fully informed that their agent Department Heads prioritize Local 52 members over non-union craftspeople in hiring and all other personnel matters. Appellant also contends that Employers have an unwritten policy and practice of hiring only Local 52 Department Heads; and that Local 52's discriminatory policies can only be carried out as a direct result of Employers' equally discriminatory policy in the recruiting and hiring of Department Heads.

However, *even if* Employers do not engage in the alleged discriminatory practices and are wholly ignorant of their agent Department Heads' personnel practices, Employers are no less liable owing to Employers failure to take affirmative action of any kind to create and implement hiring or other personnel policies and practices that might insure non-union craftspeople get equal access to employment.

Employers and Local 52 do not have an explicit, contractual hiring hall arrangement. Employers are not required to cede to Local 52 or Department Heads the bedrock personnel authorities that are exclusively those of Employers.



Is there a power in the labor relationship greater than the power to hire? Even an employer's most harmful act in the minds of most members of the public - the termination of employment - can be exercised only after an individual has been made an employee through the hiring process. It is not by mistake that the hiring authority of an individual or entity is in every case first on the list of actions that Congress, courts and agencies have established to define an employer. The Regional Director and Employers would have the General Counsel believe that Employers - and by extension any employer - can evade responsibility for acts of wrongful discrimination by simply abdicating their authority to union members and declaring themselves to have been duped. The Regional Director's decision to relieve Employers of liability for the discriminatory conduct of their supervisory employees in the instant cases effectively immunizes Employers from the consequences of similar harmful actions in the future.

If, for example, prior to an employee vote on a union organizing campaign, a group of statutory supervisors determined amongst themselves - without the knowledge of company owners and upper level management - to target rank and file workers with threats of various negative employment actions for those who encouraged a 'yes' vote on the union question, would declarations by the company owner and upper level management that they had no knowledge of the campaign relieve the employer of responsibility for the statutory supervisors anti-union animus? Let us imagine a case of alleged racial discrimination under the Civil Rights Act of 1964 filed with the Equal Opportunity Employment Commission (EEOC) in which EEOC determined that supervisors whose labor union had an unwritten policy preferring

white men for employment over African-American's, women and other protected classes had followed the discriminatory policy, but that the supervisors' employers declared they had no knowledge of that policy. Would the EEOC Regional Director dismiss the charges against the employer under those circumstances? She certainly would not; and, if she did dismiss such a charge, anyone reviewing the decision would consider doing so an abuse of discretion shocking to the conscience.

If the discriminatory practices revealed during the course of NLRB's investigation had been traced and attributed to one or two supervisors at one or two of the charged Employers, Appellant would be hard-pressed to expect Regional Director to declare Employers liable for discrimination against non-union candidates for employment. But the wrongful discrimination brought to light by Appellant's charges and the Board Agents' investigations are not isolated incidents involving a couple of "bad actors". The non-union discrimination committed by (b) (6), (b) (7)(C) acting as Employers' agents is institutional, systemic and born, Appellant contends, of a long-standing arrangement between Local 52 and Employers, the consequences for which Employers must be held to account.

**ISSUE 3:** Are Employers or Local 52 labor union the party best positioned to insure and be accountable that non-union craftspeople are not discriminated against in hiring, retention, and other personnel matters when we consider the employment relationship between Employers, Department Heads, and non-union employees in light of the relative authorities of Local 52 and Employers?

In 2012, the Attorney General of the State of New York Civil Rights Bureau (OAG) began a two (2) year investigation that ultimately determined Local 52 had

discriminated against individuals in membership through nepotistic practices preferring for Local 52 membership the friends, sons and daughters of current members over other applicants, a policy that OAG determined has a disparate impact on African-American and Latino applicants. Nine (9) years later, in 2021, the Regional Director's "investigation revealed that [Local 52] maintains and enforces rules that employees who are not full members of [Local 52]...can only work for the Employer if they are referred to the Employer by [Local 52]". Astonishingly, and in spite of her knowledge of Local 52's discriminatory history, the Regional Director believes Local 52 will, without Employers involvement or oversight, provide relief to non-union craftspeople who are, for all intents and purposes, same non-union craftspeople whom Local 52 denied union membership. The Regional Director has failed to acknowledge the union's tolerance even of anti-union activities among its (b) (6), (b) (7)(C) as revealed by Local 52 (b) (6), (b) (7)(C) failure to address Appellant being blacklisted by (b) (6), (b) (7)(C) as well as (b) (6), (b) (7)(C) stories of (b) (6), (b) (7)(C) own blacklisting by Local 52 (b) (6), (b) (7)(C) as a consequence of (b) (6), (b) (7)(C) work as a (b) (6), (b) (7)(C) when (b) (6), "got into the union in (b) (6), (b) (7)(C)". The Regional Director seems also to have elided the Local 52 attorney's recorded statements that keeping Local 52 Department Heads in control of the hiring process was crucial to maintaining the "delicate balance" required to continue excluding non-union workers from employment on productions operating under Local 52 CBAs.

For the purposes of this analysis, employers - not labor unions - employ workers:  
*"The term "employer" includes any person acting as an agent of an employer, directly or*

*indirectly, but shall not include...any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization."*

By what rule or legal standard has the Regional Director determined that Local 52 labor union is empowered to tell Employers - or any employer - who they can hire? The Employers in the instant cases are not even parties to a contractual hiring hall arrangement with Local 52. Employers, as Local 52's legal counsel stated during the meeting recorded by Appellant on (b) (6), (b) (7)(C) 2019, "...don't have to hire union. They can hire whomever they want." Despite this obvious fact, Employers have ceded their foundational authority as employers, the hiring authority, to union members and union leaders. The Regional Director's "finding" and dismissal completely ignore the fact that Department Heads are agents of Employers. Instead, the Regional Director pretends, without support in law, that Local 52 labor union is the employer for the purpose of the Regional Director's analysis and dismissal of the instant cases.

Local 52 members take an oath that effectively requires us to prefer our fellow union members in employment matters. *"I...(full name)...do hereby pledge my word and honor...to do all in my power to secure employment for brother and sister members of this Union. I shall willingly submit to such discipline as may be visited upon me for violation of this pledge."* [Emphasis added]. I, your Appellant, and every one of the nearly five thousand (5,000) members of Local 52, take this oath seriously. I have never violated this oath; and I will not violate it. Employers have empowered members of Local 52, including Appellant, to "secure employment" for other Local 52 members. Until Employers lay claim to and take responsibility for the personnel authorities they have


ceded to Local 52 Department Heads - or until they are coerced in to doing so -  
discrimination against non-union crafts people and Permit Craftspeople will continue.

## CONCLUSION

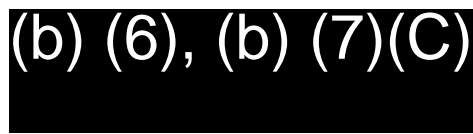
The Regional Director has determined that Local 52 (b) (6), (b) (7)(C), as a matter of policy, discriminate against non-union craftspeople in hiring and other personnel matters. Employers have knowingly empowered (b) (6), (b) (7)(C) - who are statutory supervisors working as agents of Employers in the interests of Employers - with plenary authority in recruiting, hiring and other personnel matters involving those (b) (6), (b) (7)(C) subordinates. Employers have failed to take affirmative steps to insure their supervisors conduct personnel activities lawfully on behalf of Employers. Local 52 has shown itself to be contemptuous of the labor law and of authorities charged with enforcing those laws. Employers employ and are the party best positioned to correct the problems brought to light as a result of Appellant's charges.

Appellant asks the General Counsel to reverse the Regional Director's decision to dismiss the instance cases and to instruct the Regional Director to proceed with the cases against Employers based on the merits and in concert with the Regional Director's decision in the cognate case against Local 52. Alternatively, Appellant asks the General Counsel to remand the instant cases to The Region for further investigation.

(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C)



(b) (6), (b) (7)(C) 2021